

UNITED STATES DISTRICT COURT  
DISTRICT COURT OF MASSACHUSETTS

2022 MAY 24 AM 11:32

U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
MANUEL PENA

v.

\_\_\_\_\_  
SUPERINTENDENT OF MCI  
SOUZA BARANOWSKI STATE PRISON  
\_\_\_\_\_

CIVIL ACTION  
NO.: 22-mc-91239-ADB

**MOTION TO EXTEND DEADLINE TO FILE HABEAS CORPUS PETITION**  
**AND/OR TO HOLD HABEAS CORPUS PETITION IN ABEYANCE**

NOW COMES the Petitioner in the above-captioned matter, MANUEL PENA, and respectfully moves this Honorable Court to stay the proceedings in this matter and hold his habeas corpus petition under 28 USC 2254 in abeyance to allow the Defendant to exhaust his state remedies. As grounds, the Defendant states that Petitioner has a "mixed" federal habeas corpus petition, containing some claims that have been exhausted in the state courts and some that have not. The Petitioner asserts that a "Stay and Abeyance" procedure - under which a Federal District Court stays the mixed petition to allow the prisoner to (1) to present the unexhausted claims to a state court in the first instance, and (2) then, to return to federal court for a review of the perfected petition- is in order because there is good cause for the prisoner's failure to exhaust the claims first in

state court and because Petitioner's claims have merit. See *Rhines v. Weber*, 544 US 269, 277-279 (2005).

The state delayed Petitioner's ability to file a habeas corpus petition due to the state action related to transfers between prisons, denial of access to law library, and restrictions created by COVID-19. The Petitioner was just recently granted access to the law library again and states the filing deadline should begin to run today since the obstacles were just lifted. Due to COVID-19 protocols and procedures, the Petitioner was denied regular, consistent, and effective access to the law library for the last two years which prevented Petitioner from perfecting a habeas corpus petition. Throughout the pandemic, the Petitioner was denied access for safety protocol. Then, the Petitioner was recently transferred to Souza Baranowski where access to the library is limited to two times per month. The amount of trips to library since his recent transfer have been insufficient to prepare the habeas corpus petition. Accordingly, Petitioner seeks an extension of the filing deadline and requests that the clock for 1 year and 90 days start to run as of this date as some of the obstacles have been removed.

Additionally, Petitioner's good cause for not exhausting his claims first in state court is due to COVID-19, the new protocols created in the state prisons due to COVID-19, and the

Petitioner's limited access to the law library as a result. Petitioner was denied access to the law library for most of the time in prison during the COVID-19 pandemic. The Petitioner was also transferred between MCI-Sirley and MCI-Souza Baranowski prisons which caused additional delay. Petitioner has since filed new successor counsel to perfect an additional review in the state court of his underlying conviction, namely to file a motion for new trial based on issues not properly raised by prior counsel. The Petitioner seeks relief in state court including ineffective assistance of counsel and other grounds for a new trial related to the false testimony of the complaining witness. Petitioner has sought the help of a private investigator to show it was impossible for the complaining witness to see what he claimed through his bedroom window. This testimony wrongfully placed the Defendant at the scene of the crime. This motion for new trial has merit. Accordingly, Petitioner is seeking additional time to perfect his Habeas Corpus Petition and seeks an extension for as long as this Honorable Court will permit or for up to two years while Petitioner exhausts his remaining claims.

WHEREFORE, the Petitioner, Manuel Pena, respectfully requests that this Motion be ALLOWED.

The Petitioner,  
MANUEL PENA,

**/s/ MANUEL PENA**

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MANUEL PENA  
MCI-SOUZA BARANOWSKI  
100 HARVARD RD  
SHIRLEY, MA 01464

Date: 5/17/22

**CERTIFICATE OF SERVICE**

I, Manuel Pena, the Petitioner, hereby certify that on this date I served a copy of this motion on the Attorney General's Office for the Commonwealth of Massachusetts by mailing a copy to their office.

**/s/ MANUEL PENA**

Date: 5/17/22

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MANUEL PENA